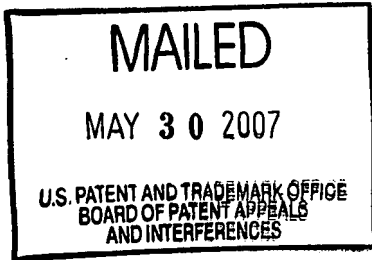


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte CONSTANTIN C. STANCU
and
SILVA HITI

Application 09/973,685

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on March 24, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

Section § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 3, August 2005) states:

Requirements for Examiner's Answer

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(3) Status of Claims. A statement of whether the Examiner agrees or disagrees with the statement of the status of claims contained in the brief. If the examiner disagrees with the statement of the status of claims contained in the brief, the examiner must set forth a correct statement of the status of all the claims in the proceeding.

. . . .

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

While the Examiner's Answer mailed March 23, 2006 states that "[t]he statement of the claims contained in the brief¹ is correct" [page 2], it is noted that claim 5 was originally cancelled by an Amendment filed May 22, 2003. The Notice of Appeal filed January 26, 2004, states that "applicants appeal the final rejection of claims 1-4, 6 and 8-12. The Appeal Brief filed April 1, 2004 stated that "[c]laims 1-4, 6 and 8-12 are under final rejection and are

¹ The Appeal Brief filed December 16, 2005 states that "[c]laims 1-6, and 8-12 are under final rejection and are on appeal [page 3].

on appeal [page 4]. The Non-Final Rejection mailed June 18, 2004 lists the grounds of rejection as follows:

Claims 1-2, 4, 6 and 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Iijima et al., US 5936378 [page 3]; and

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iijima et al. in view of Carpenter et al., US 4642502 [page 4].

Cancelled claim 5 does not appear to be mentioned again until it is amended by the November 8, 2004 Amendment. Clarification is required regarding the status of claim 5.

In addition, while the Examiner's Answer mailed March 23, 2006 lists the "Evidence Relied Upon" as

5,936,378	Iijima et al.	10-1999
5,920,161	Obara et al.	7-1999

the sole ground of rejection is listed as follows:

Claims 1-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iijima et al., US 5936378 in view of Nagate et al., US 5864192 [page 3].

It is noted that while the Nagate reference appears in the ground of rejection, it does not appear as "Evidence Relied Upon." Clarification is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for clarification regarding the status of claim 5;
- 2) for clarification regarding the status of the Nagate reference (US 5,864,192; and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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